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ORDINANCE NO. 3991

AN ORDINANCE OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA,
AMENDING CHAPTER 2 OF DIVISION 3 OF TITLE 1 OF THE SAN
BERNARDINO COUNTY CODE RELATING TO EMPLOYEE RELATIONS.

The Board of Supervisors of the County of San Bernardino, State of California,
ordains as follows:

SECTION 1. Chapter 2 of Division 3 of Title 1 of the San Bernardino County
Code is amended, to read:

Chapter 2: Employee Relations.

Sections:

- 13.021 Purpose.
- 13.022 Definitions.
- 13.023 County Management Rights.
- 13.024 Employee's Rights.
- 13.025 Authorized Employee Representation Units.
- 13.026 Bargaining Unit Composition
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- 13.028 Scope of Representation.
- 13.029 Exclusive Recognized Employee Organizations' Rights.
- 13.0210 Collective Bargaining.
- 13.0211 Unfair Labor Practices.
- 13.0212 Strikes and Other Concerted Activities
- 13.0213 Administration.
- 13.0214 Separability.

13.021 Purpose.

It is the purpose of this chapter:

(a) To establish an orderly system for conducting employer-employee relations
within the County.

(b) To establish a system to facilitate communications between management and
employees and to provide for the exchange of information and ideas.

(c) To clarify in writing the rights and obligations of employees, employee organizations, and County management in the conduct of employer-employee relations activities.

13.022 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

(a) "Agency Shop" means an arrangement that requires an employee, as a condition of continued employment, either to join the exclusive recognized employee organization or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of the organization.

(b) "Authorized Employee Representation Unit" means a Unit of employee job classes and/or positions established pursuant to Section 13.025 herein, or hereafter created pursuant to provisions of Section 13.026 herein.

(c) "Certify" means the process by which the County formally acknowledges an employee organization as the exclusive recognized employee organization that represents County employees in an authorized representation Unit.

(d) "Confidential Employee" means an employee who, in the regular course of his or her duties, has access to, or possesses information relating to, the County's employer-employee relations program.

(e) "Consult/Consultation in Good Faith" means to communicate orally or in writing for the purpose of presenting and obtaining views or advising of intended actions on matters outside the scope of representation; and does not involve the exchange of proposals and counterproposals in an endeavor to reach agreement.

(f) "County" means the County of San Bernardino, and, where appropriate herein, refers to the Board of Supervisors or any duly authorized County Representative.

1 (g) "Day" means calendar day unless expressly stated otherwise.

2 (h) "Emergency" means an unforeseen circumstance requiring immediate action,
3 a sudden unexpected happening, an unforeseen occurrence or condition.

4 (i) "Employee" means any person employed by the County, excepting those
5 persons elected by popular vote or appointed to office by the Governor of the State of
6 California.

7 (j) "Employee Organization" means any organization which includes employees
8 of the County and which has as one of its primary purposes representing such employees in
9 their relations with the County, or any organization that seeks to represent employees in
10 their relations with the County.

11 (k) "Exclusive Recognized Employee Organization" or "Exclusive Representative"
12 means an employee organization that has been certified by the County as the employee
13 organization, which received the majority of votes in a valid representation election for an
14 authorized employee representation Unit.

15 (l) "Impasse" means the representatives of the County and a recognized
16 employee organization have reached a point in collective bargaining, conferring in good
17 faith, where their differences on matters to be included in a Memorandum of Understanding,
18 and concerning which they are required to meet and confer, remains so substantial and
19 prolonged that further meeting and conferring would be futile.

20 (m) "Interest Dispute" means a disagreement between County Management and
21 an exclusive recognized employee organization concerning matters within the scope of
22 representation.

23 (n) "Meet and Confer in Good Faith" means that the County and the exclusive
24 recognized employee organization shall have the mutual obligation personally to meet and
25

1 confer promptly upon request of either party and continue for a reasonable period of time in
2 order to exchange freely information, opinions, and proposals, and to endeavor to reach
3 agreement on matters within the scope of representation prior to the adoption by the County
4 of its final budget for the ensuing year.

5
6 (o) "Memorandum of Understanding" means a written document prepared by the
7 County and the exclusive recognized employee organization, which sets forth those matters
8 within the scope of representation upon which both parties have agreed. Such document
9 shall not be binding on the County until such time that it has been approved by the Board of
10 Supervisors.

11
12 (p) "Rights Dispute" means a disagreement between County Management and an
13 exclusive recognized employee organization or employees who are not members of an
14 exclusive recognized employee organization, concerning the interpretation, application, or
15 violation of any Memorandum of Understanding.

16 (q) "Service" or "Serve" means notification by mail or by personal service, and
17 shall be deemed complete upon mailing, hand delivery or leaving a copy at the principal
18 office of the party or representative.

19 **13.023 County Management Rights.**

20
21 Subject to the provisions of any current Memorandum of Understanding, which is in
22 full force and effect, all management rights and functions shall remain vested exclusively
23 with the County except those, which are clearly and expressly limited in this chapter. It is
24 recognized merely by way of illustration that such management rights and functions include
25 but are not limited to:

26 (a) The right to determine the mission of each of its groups, agencies,
27 departments, institutions, boards, and commissions.
28

1 (b) The right of full and exclusive control of the management of the County;
2 supervision of all operations; determination of the methods and means of performing any
3 and all work; and composition, assignment, direction, location, and determination of the size
4 and mission of the work force.

5
6 (c) The right to determine the work to be done by the employees, including
7 establishment of levels of service and staffing patterns.

8 (d) The right to change or introduce new or improved operations, methods, means
9 or facilities; or, to contract for work to be done.

10 (e) Subject to the Personnel Rules, the right to hire, schedule, set and enforce
11 performance standards, promote, transfer, release and lay off employees; to suspend,
12 demote, reduce in step or grade, discipline and discharge employees for cause; to prescribe
13 qualifications for employment and determine whether they are met; and to otherwise
14 maintain orderly, effective, and efficient operations.
15

16 **13.024 Employee's Rights.**

17 (a) All employees shall have the following rights which may be exercised in
18 accordance with State Law, the County Charter, and applicable ordinances, rules and
19 regulations or as provided in a current Memorandum of Understanding that is in full force
20 and effect.
21

22 (1) The right to form, join, and participate in the activities of employee
23 organizations of their own choosing for the purpose of representation on all matters of
24 employer-employee relations.

25 (2) The right to refuse to join or participate in the activities of employee
26 organizations and the right to represent themselves individually in their employment
27 relations with the County.
28

1 (3) The right to be free from interference, intimidation, restraint, coercion,
2 discrimination, or reprisal on the part of an appointing authority, supervisor, other
3 employees, or employee organizations as a result of their exercise of rights granted in
4 Section 13.024(a)(1) and (2).

5
6 (b) Employees who are full-time peace officers as that term is defined in Chapter
7 4.5 of Title 3, Part 2 of the Penal Code shall have the right to join or participate in employee
8 organizations which are composed solely of such peace officers and which concern
9 themselves solely and exclusively with the wages, hours, working conditions, welfare
10 programs, and advancement of the academic and vocational training and furtherance of the
11 police profession, and which are not subordinate to any other organization.

12
13 **13.025 Authorized Employee Representation Units.**

14 (a) The following representation units are established for employer-employee
15 relations purposes. Definitions are general in nature and serve as an illustration and guide in
16 the unit placement of classifications.

17 (1) Management Unit.

18 Definition: Shall include classifications or positions which under
19 administrative direction of a group or Department Head have departmental responsibility for
20 implementing program requirements through supervisors; formulating, administering, and
21 managing County policies and programs; and, responsible for employee relations at the
22 department level, including adherence to labor contracts, grievance procedures, employee
23 relations provisions of the County Code, and the training of supervisory employees.

24
25 (2) Safety Management and Supervisory Unit.

26 Definition: Shall include classifications of employees qualifying as a
27 "County Peace Officer" as defined in Section 31469.1 of the County Employees' Retirement
28

1 Law of the California Government Code or are full-time "peace officers" as that term is
2 defined in Sections 830.1 and 830.3(b) of the California Penal Code and are so assigned to
3 the unit by the Board of Supervisors; and, having responsibility for implementing program
4 requirements; formulating, administering, and managing County policies and programs; or,
5 having authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign,
6 reward, evaluate, or discipline other employees, or responsibility to direct them, or to adjust
7 their grievances, or to effectively recommend such action if in connection with the foregoing
8 the exercise of such authority is not of a merely routine or clerical nature, but requires the
9 use of independent judgment.
10

11 (3) Supervisory Unit.

12 Definition: Shall include classifications or positions having authority to
13 hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, evaluate, or
14 discipline other employees; or responsibility to direct them; or, to adjust their grievances; or,
15 to effectively recommend such action if in connection with the foregoing the exercise of such
16 authority is not of a merely routine or clerical nature, but requires the use of independent
17 judgment.
18

19 (4) Professional Unit.

20 Definition: Shall include classifications requiring the performance of
21 work that is either predominantly intellectual, philosophical, largely governed by conceptual
22 understandings, and varied in character, involving continuing exercise of independent
23 discretion and judgment in work performance and requiring specialized knowledge and skills
24 equivalent to that attained by a prolonged course of intellectual instruction in an institution of
25 higher learning, or hospital, as distinguished from general academic training or from
26 apprenticeship training; or, any employee who is performing in a training capacity under the
27
28

1 direction of a professional person in preparation to qualify as a professional employee as
2 defined above.

3 (5) Safety Unit.

4 Definition: Shall include classifications of employees qualifying as a
5 "County Peace Officer" as defined in Section 31469.1 of the County Employees' Retirement
6 Law of the California Government Code or are fulltime "peace officers" as that term is
7 defined in Sections 830.1 and 830.3(b) of the California Penal Code and are so assigned to
8 the unit by the Board of Supervisors due to the nature of the work being directly related to
9 the law enforcement function, which work does not involve work of a supervisory or
10 management nature as described herein.
11

12 (6) Technical and Inspection Unit.

13 Definition: Shall include classifications requiring the use of specific
14 skills, knowledge and abilities in the inspection of facilities and/or conditions to determine
15 compliance with appropriate rules, laws, codes, and regulations; or requiring use of specific
16 knowledge or techniques as opposed to a broad, philosophical, or a theoretical field of
17 knowledge. Employs practical knowledge marked by characteristics of specialized
18 experience related to the performance of specifically delineated techniques entailing a
19 particular subject or subjects.
20

21 (7) Craft, Labor and Trades Unit.

22 Definition: Shall include classifications requiring competence in one (1)
23 or more crafts or trades; thorough knowledge and skill in the use of manual or equipment
24 operations; use of machines, tools, or other special equipment for the repetitive production
25 of single purpose jobs, which may include responsibility for a product or maintenance of
26 equipment; or, use of manual or physical dexterity necessary to complete a specific work
27
28

objective, which requires minimal exercise of independent judgment and is normally learned through on-the-job training. Usually includes all jobs that are apprenticeable.

(8) Clerical Unit.

Definition: Shall include classifications performing work concerned with preparing, recording, transcribing, transferring, systematizing, and preserving written and oral communications and records; operating business, office, accounting, and routine electronic data processing equipment; collecting and recording of fees; or collecting, recording, compiling, and tabulating financial, statistical or other data. Personal, telephonic and routine written contact with the public on procedural and information matters is normally characteristic of clerical unit positions.

(9) Administrative Services Unit.

Definition: Shall include classifications characterized by work consisting of that which inherently includes the regular exercise of independent discretion and judgment, in support of the management and operation of an organization, requiring general academic degree work, rather than a specific, job related professional degree.

(10) Exempt Unit.

Definition: Shall include classifications that have been determined to formulate and administer significant executive responsibilities under the direction of an Assistant County Administrator, an elected official, a department head or on behalf of the County Administrative Officer, as well as positions that have significant involvement in the County's employer-employee relations program or, those with access to highly confidential information and involvement with matters of significant impact to County Operations.

(11) Specialized Peace Officer Unit.

1 Definition: Shall include classifications of employees qualifying as
2 "peace officers" as that term is defined in the California Penal Code who are entitled to a
3 separate "peace officer" only unit pursuant to Government Code section 3508, excepting
4 therefrom those "peace officers" as defined in section 830.1 and 830.3(b) of the California
5 Penal Code who qualify as a "County Peace Officer" as defined in Section 31469.1 of the
6 County Employees' Retirement Law of the California Government Code and excluding the
7 classifications of Probation Officer I, Probation Officer II and Probation Officer III. Such
8 classifications are so assigned to the unit by the Board of Supervisors due to the nature of
9 the work being directly related to the limited law enforcement function which work does not
10 involve work of a supervisory or management nature as described herein.
11

12 (12) Specialized Peace Officer Supervisory Unit.
13

14 Definition: Shall include classifications of employees qualifying as
15 "peace officers" as that term is defined in the California Penal Code who are entitled to a
16 separate "peace officer" only unit pursuant to Government Code section 3508, excepting
17 there from those "peace officers" as defined in section 830.1 and 830.3(b) of the California
18 Penal Code who qualify as "County Peace Officer" as defined in section 31469.1 of the
19 County's Employees' Retirement Law of the California Government Code; and, having
20 responsibility for implementing program requirements; formulating, administering, and
21 managing County policies and programs; or, having authority, to hire, transfer, suspend, lay
22 off, recall, promote, discharge, assign, reward, evaluate, or discipline other employees, or
23 responsibility to direct them, or to adjust their grievances, or to effectively recommend such
24 action, if in connection with the foregoing the exercise of such authority is not of a merely
25 routine or clerical in nature, but requires the use of independent judgment.
26

27 (13) Attorney Unit.
28

1 Definition: Shall include classifications in the District Attorney, Public
2 Defender and Child Support Departments, excluding classifications in the Supervisory Unit
3 and Exempt Group, requiring admission to the State Bar of California, and requiring the
4 performance of legal work that is either predominantly intellectual, philosophical, or largely
5 governed by conceptual understandings, and varied in character, involving continuing
6 exercise of independent discretion and judgment and work performance, and requiring
7 specialized knowledge and skills equivalent to that obtained by a prolonged course of
8 intellectual instruction in a law school.
9

10 (14) Nurses Unit.

11 Definition: Shall include all classifications of employees defined as
12 being in the classified service pursuant to the Personnel Rules for the County of San
13 Bernardino, excluding classifications in the Supervisory Nurses Unit and Exempt Group,
14 requiring licensure by the Board of Registered Nursing as a registered nurse, and are so
15 assigned to the unit by the Board of Supervisors due to the nature of work being directly
16 related to the practice of nursing as defined in Business and Professions Code section
17 2725 which work does not involve work of a supervisory or management nature as
18 described herein.
19

20 (15) Supervisory Nurses Unit.

21 Definition: Shall include all classifications of employees, excluding
22 classifications in the Nurses Unit and Exempt Group, requiring licensure by the Board of
23 Registered Nursing as a registered nurse and: having responsibility for implementing
24 program requirements, formulating, administering, and managing County policies and
25 programs; or, having authority to hire, transfer, suspend, lay off, recall, promote, discharge,
26 assign, reward, evaluate, or discipline other employees, or responsibility to direct them, or to
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1 adjust their grievances, or to effectively recommend such action if, in connection with the
2 foregoing, the exercise of such authority is not of a merely routine or clerical nature, but
3 requires the use of independent judgment.

4 (16) Per Diem Nurses Unit.

5 Definition: Shall include the classifications of Interim Permit Nurse –
6 Per Diem, Registered Nurse I – Per Diem, Registered Nurse II – Per Diem, ARMC Float
7 Pool Nurse – Per Diem and employees who are authorized to work as an Interim Permit
8 Nurse, excluding classifications in the Supervisory Nurses Unit, Nurses Unit, Exempt Group,
9 and those employees working pursuant to an individual contract.
10

11 (17) Probation Unit.

12 Definition: Shall include the classifications of Probation Officer I,
13 Probation Officer II and Probation Officer III. Such classifications are assigned to the unit by
14 the Board of Supervisors due to the nature of the work and does not involve work of a
15 supervisory or management nature as described herein.
16

17 (b) The County shall have the exclusive right to allocate any classification
18 established subsequent to the assignments herein to an authorized employee
19 representation unit(s). The right to determine units and assign classifications to such units is
20 the exclusive right of management subject to the provisions of this chapter of the County
21 Code.
22

23 (c) The foregoing units are determined to be authorized employee representation
24 units based upon relationships within the classification structure and treatment unique to
25 these units as to similar type of grievances, common application of benefits and working
26 conditions, factors used in rating performance; impact of achieving an effective level of
27 employee representation, historical employer-employee relationships; the numerical size of
28

1 the unit, desires of employees, the relationship of the unit to organizational structure of the
2 County, and the effect on the existing classification structure of dividing a single class
3 among two (2) or more units; the effect of the proposed unit on the efficient operations of the
4 County and the compatibility of the unit with the responsibilities of the County and its
5 employees to serve the public; and, the effect that the unit will have on employer-employee
6 relations emphasizing the availability and authority of County representatives to bargain
7 effectively with the exclusive recognized employee organization. The relevant and overriding
8 consideration in establishing the units is to establish units composed of the largest number
9 of employees that have a community of interest regardless of precise preparatory
10 qualifications, common supervision or interchangeability of skills, and any other relevant
11 factors; provided, however, that sworn peace officers have the right to be included in a unit
12 of representation comprised exclusively of sworn peace officers as provided by State Law.
13
14

15 (d) Employees working on a seasonal, temporary or casual basis or students
16 whose primary purpose is educational training shall not be included in any authorized
17 employee representation unit.

18 **13.026 Bargaining Unit Composition**

19 The Board of Supervisors shall decide the bargaining unit appropriate for the
20 purposes of collective bargaining. In determining the appropriateness of each bargaining
21 unit, the Board shall consider the factors specified in 13.025 (c). A representation unit does
22 not have to be the most appropriate unit, only an appropriate unit.
23

24 (a) Modification of Existing Units.

25 The unit modification process is used to consolidate existing bargaining units
26 or to sever classifications from an existing unit to create a new separate unit or to expand
27 the existing unit by adding new classifications. An existing authorized employee
28

1 representation unit may be modified upon petition of the Director of Human Resources or an
2 employee organization. Unit modification is used when all or a substantial number of the
3 total positions are removed from an existing authorized employee representation unit and
4 placed in a new or existing authorized employee representation unit. The existing unit
5 proposed to be modified and/or the proposed new unit must be appropriate standing alone.
6

7 (1) Unit Modification Proposed by Director of Human Resources.

8 (A) Content and Timing of Statement.

9 The Director of Human Resources may, at any time, propose
10 that an existing authorized employee representation unit be modified by filing a statement
11 with the Employee Relations Division containing the following: (1) the basis for the
12 proposed modification; and (2) a description of the bargaining unit proposed specifying the
13 classifications to be removed from the existing authorized employee representation unit(s)
14 and placed in a separate authorized employee representation unit.
15

16 (B) Notice of Proposed Unit Modification.

17 Upon receipt of the statement from the Director of Human
18 Resources, the Employee Relations Division shall (1) advise all employees in the proposed
19 new authorized employee representation unit of such proposed unit modification by posting
20 notice at appropriate work locations for thirty (30) days; and (2) shall serve notice of the
21 filing to all exclusive recognized employee organizations.
22

23 (C) No Challenges to Appropriateness of Proposed Unit.

24 If no challenge is filed by an employee organization within thirty
25 (30) days after service of the notice of the filing of the petition, the Employee Relations
26 Division shall submit the proposed bargaining unit modification to the Board of Supervisors.
27

28 (D) Challenges to the Appropriateness of Proposed Unit.

1 Within thirty (30) days after service of the notice of the filing of
2 the petition, a challenge may be filed, in writing, with the Employee Relations Division by an
3 employee organization. A challenge by an employee organization shall state the grounds
4 upon which such employee organization has an interest. In addition, the challenge shall
5 clearly indicate the reasons why the proposed unit modification is not appropriate. Any
6 challenge shall be accompanied by proof of support of ten percent (10%) or more of the
7 employees proposed to be removed from an existing employee representation unit,
8 provided, however, that the incumbent exclusive representative shall not be required to
9 provide proof of support in order to file a challenge. "Proof of support", for purposes of this
10 section, shall mean individually signed employee authorization cards dated within the thirty
11 (30) day challenge period setting forth the intent of the employees with respect to
12 representation by the employee organization.
13

14
15 (E) Hearing on Challenges.

16 Upon receipt of a challenge to the appropriateness of the unit, a
17 hearing officer shall be selected by the County from the hearing officer panel established
18 pursuant to 13.026(e) to conduct a hearing. Following the hearing, the hearing officer shall
19 issue an advisory opinion and award that: (1) grants or denies the challenge; or (2)
20 recommends modification of the authorized employee representation unit proposed by the
21 Director of Human Resources. If the hearing officer recommends modification,
22 consolidation and/or the creation of a new authorized employee representation unit, as
23 applicable, the Employee Relations Division shall submit the recommendation to the Board
24 of Supervisors.
25

26 (F) Creation of New Employee Representation Unit.
27
28

1 A newly authorized employee representation unit shall be
2 created upon approval of the Board of Supervisors.

3 (2) Unit Modification Proposed by Employee Organization.

4 (A) Content and Timing of Petition.

5 An employee organization may propose that an existing
6 authorized employee representation unit be modified by filing a petition with the Employee
7 Relations Division. Such petition shall be filed during the thirty (30) day period beginning not
8 earlier than three-hundred and sixty days (360) days and ending not later than three-
9 hundred and thirty (330) days before the expiration date of any Memorandum of
10 Understanding covering classifications in the authorized employee representation unit
11 proposed to be modified or at any time after expiration of such Memorandum of
12 Understanding.
13
14

15 A petition for modification shall contain:

16 (I) The name and street address of the employee
17 organization.

18 (II) The name, title, mailing address and business telephone
19 numbers of the employee organization's principal representative.
20

21 (III) A statement of the reasons why the unit modification is
22 appropriate.

23 (IV) A statement that the employee organization has no
24 restriction on membership based on race, color, creed, national origin, sex, age, physical
25 handicap, marital status, sexual orientation or political affiliation.
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1 (V) A statement that the primary purpose of the employee
2 organization is to represent employees on matters concerning wages, hours, and other
3 terms and conditions of employment.

4 (VI) A statement as to whether the employee organization is a
5 chapter of, or affiliated directly or indirectly in any manner, with a local, regional, state,
6 national or international organization, and, if so, the name and address of each such
7 organization.

8 (VII) Certified copies of the employee organization's
9 constitution and by-laws.

10 (VIII) The date of expiration of any Memorandum of
11 Understanding or extension of such Memorandum.

12 (IX) A description of the unit proposed by the employee
13 organization specifying the classifications to be removed from the existing authorized
14 employee representation unit(s) and placed in a separate authorized employee
15 representation unit.

16 (X) Individually signed employee authorization cards dated
17 within thirty (30) days prior to the filing of the petition which show proof of support of forty
18 percent (40%) or more of the employees within the proposed new representation unit,
19 including forty percent (40%) of the employees proposed to be removed from an existing
20 unit and placed in the proposed new unit; which proposed unit must include at least twenty
21 percent (20%) of the employees making up the authorized employee representation unit
22 proposed to be modified. The requirement that the proposed unit must include at least
23 twenty percent (20%) of the employees in the existing unit shall not apply where the
24 employees are exercising their right to be in a peace officer only unit pursuant to
25
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1 Government Code Section 3508. Such signed employee authorization cards shall clearly
2 set forth the intent of the employee with respect to representation by the employee
3 organization and support for the proposed unit modification.

4 (B) Response and Notice of Filing of Petition.

5
6 Upon receipt of the petition, the Employee Relations Division
7 shall expeditiously determine whether or not there has been compliance with the
8 requirements of 13.026(a)(2)(A). If an affirmative determination is made by the Employee
9 Relations Division, it shall (1) advise all employees in the proposed new authorized
10 employee representation unit of such proposed unit modification by posting notice at
11 appropriate work locations for thirty (30) days; and shall (2) serve notice of the filing to the
12 Director of Human Resources and all exclusive recognized employee organizations.

13 (C) Contest to the Determination that the Petition is not in
14 Compliance.

15
16 If the Employee Relations Division determines that the petition is
17 not in compliance with the requirements of 13.026(a)(2)(A), the Employee Relations
18 Division shall so notify the petitioning employee organization. If the petitioning employee
19 organization disputes the finding that the petition was not in compliance, it may file a
20 contest, in writing, with the Employee Relations Division within thirty (30) days after service
21 of notice that the petition was not in compliance. If the contest is not granted by the
22 Employee Relations Division, a hearing officer shall be selected by the County from the
23 hearing officer panel established pursuant to 13.026(e) to conduct a hearing to determine
24 compliance with the process provided for in this section. Following the hearing, the hearing
25 officer shall grant or deny the contest. If the hearing officer finds the petition was not in
26 compliance with the requirements of 13.026(a)(2)(A), the petition shall be dismissed. If the
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1 hearing officer finds that the petition was in compliance, the petition shall be processed in
2 accordance with this section.

3 (D) No Challenges to Appropriateness of Proposed Unit.

4 If no challenge is filed by any organization within thirty (30) days
5 after service of the notice of the filing of the petition, the Employee Relations Division shall
6 submit the proposed bargaining unit modifications to the Board of Supervisors.
7

8 (E) Challenges to the Appropriateness of Proposed Unit.

9 Within thirty (30) days after service of the notice of the filing of
10 the petition, a challenge may be filed, in writing, with the Employee Relations Division by an
11 employee organization or the Director of Human Resources. A challenge by an employee
12 organization or the Director of Human Resources shall state the grounds for the challenge
13 clearly indicating the reasons why the proposed unit modification is not appropriate. Any
14 challenge filed by an employee organization must also be accompanied by proof of support
15 of ten percent (10%) or more of the employees proposed to be removed from an existing
16 authorized employee representation unit, provided, however, that the incumbent exclusive
17 representative shall not be required to provide proof of support in order to file a challenge.
18 "Proof of support", for purposes of this section, shall mean individually signed employee
19 authorization cards dated within the thirty (30) day challenge period setting forth the intent of
20 employees with respect to representation by the employee organization.
21

22 (F) Hearing on Challenges.

23 Upon receipt of a challenge to the appropriateness of the unit, a
24 hearing officer shall be selected by the County from the hearing officer panel established
25 pursuant to 13.026(e) to conduct a hearing. Following the hearing, the hearing officer shall
26 (1) grant or deny the challenge; or (2) recommend modification of the authorized employee
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1 representation unit proposed by the employee organization. If the hearing officer
2 recommends modification, consolidation and/or the creation of new authorized employee
3 representation unit, as applicable, the Employee Relations Division shall submit such
4 recommendation to the Board of Supervisors.

5
6 (G) Creation of New Employee Representation Unit.

7 The recommendation of the hearing officer regarding
8 modification, consolidation and/or the creation of new representation units are subject to and
9 effective upon approval of the Board of Supervisors.

10 (b) Clarification of Existing Units.

11 The unit clarification process is used to determine whether a particular
12 classification is included or excluded (i.e. should be added to or deleted) from an existing
13 unit based upon the existing unit description and the duties of the classification in question.
14 Unit clarification is only appropriate if the number of positions to be added or removed is
15 substantially smaller than the number of employees in an existing unit so as to not create a
16 question as to the majority status of the incumbent exclusive representative. In the absence
17 of a question of majority representation, a petition for clarification of an existing unit may be
18 filed by the Director of Human Resources or by an exclusive representative.
19

20
21 (1) Content and Timing of Petition.

22 An exclusive recognized employee organization or Director of Human
23 Resources, at any time, may file a petition, with the Employee Relations Division, to clarify
24 whether a particular classification is placed in the appropriate bargaining unit based on the
25 existing unit description specified in 13.025(a).

26 (A) A petition for clarification filed by an exclusive representative
27 must contain:
28

1 (I) The name and street address of the exclusive
2 representative.

3 (II) The name, title, mailing address and business telephone
4 number of the exclusive representative's principal representative.
5

6 (III) A listing of the classifications and the number of
7 employees to be added to and/or removed from an existing authorized representation unit.

8 (IV) A statement that the petitioning employee organization is
9 an exclusive recognized employee organization.

10 (V) The reasons why the petitioning exclusive representative
11 seeks clarification.
12

13 (B) A petition for clarification filed by the Director of Human
14 Resources must contain:

15 (I) A listing of the classifications and the number of
16 employees to be added to and/or removed from an existing authorized employee
17 representation unit.

18 (II) The reasons why the Director of Human Resources seeks
19 clarification.
20

21 (2) Response and Notice of Filing of Petition.

22 Upon receipt of a petition for clarification, the Employee Relations
23 Division shall determine (1) whether or not the proposed clarification is appropriate and (2)
24 whether there has been compliance with the requirements of 13.026(b)(1). If both criteria
25 are met, the Employee Relations Division shall then (1) advise all employees in the
26 classifications proposed to be assigned to a different representation unit by posting notice at
27 appropriate work locations for thirty (30) days; and (2) serve notice of the filing to all
28

1 exclusive representatives of petitioned-for employees if different from the petitioning
2 exclusive representative and the Director of Human Resources unless the petition was filed
3 by the Director.

4 (3) No Contest to Petition or Challenges to the Proposed Unit Clarification.

5 If the Employee Relations Division determines that the proposed
6 clarification is appropriate and the petition is in compliance and there has been no challenge
7 filed by any exclusive representative of the petitioned-for employees or the Director of
8 Human Resources within thirty (30) days after service of the notice of the filing of the
9 petition, the Employee Relations Division shall submit the proposed unit clarification to the
10 Board of Supervisors.
11

12 (4) Contest to Employee Relations Division Determination and Challenges
13 to the Proposed Unit Clarification.
14

15 Within thirty (30) days after service of the notice of filing of the petition,
16 a challenge or contest may be filed, in writing, with the Employee Relations Division by any
17 exclusive representative of the petitioned-for employees or the Director of Human
18 Resources. A challenge or contest shall clearly indicate the reasons or basis for the
19 challenge or contest.
20

21 (5) Hearing on Challenges.

22 Upon receipt of a challenge to the appropriateness of the clarification or
23 contest to the determination of the Employee Relations Division, a hearing officer shall be
24 selected by the County from the hearing officer panel established pursuant to 13.026(e) to
25 conduct a hearing. Following the hearing, the hearing officer shall grant or deny the
26 challenge and/or contest. If the hearing officer recommends that a classification be added
27 to an existing authorized employee representation unit or be removed from one authorized
28

1 employee representation unit and placed in another, the Employee Relations Division shall
2 submit such recommendation to the Board of Supervisors.

3 (c) Establishment of New Units.

4 A newly authorized employee representation unit, comprised of unrepresented
5 classifications not assigned to an authorized employee representation unit, may be created
6 upon petition of an employee organization in instances where accretion of the
7 unrepresented classifications into an existing unit is not appropriate pursuant to the unit
8 clarification process. A newly created unit established under this section shall be subject to
9 and consistent with the requirements of 13.025.

11 (1) Content and Timing of Petition.

12 An employee organization may, at any time, propose that a newly
13 authorized employee representation unit, comprised of unrepresented classifications, be
14 created by filing a petition with the Employee Relations Division.

16 A petition for unit creation shall contain:

17 (A) The name and street address of the employee
18 organization.

19 (B) The name, title, mailing address and business telephone
20 numbers of the employee organization's principal representative.

22 (C) A statement of the reasons why a new unit is appropriate.

23 (D) A statement that the organization has no restriction on
24 membership based on race, color, creed, national origin, sex, age, physical handicap,
25 marital status, sexual orientation or political affiliation.

1 (E) A statement that the primary purpose of the employee
2 organization is to represent employees on matters concerning wages, hours, and other
3 terms and conditions of employment.

4 (F) A statement as to whether the employee organization is a
5 chapter of, or affiliated directly or indirectly in any manner, with a local, regional, state,
6 national or international organization, and, if so, the name and address of each such
7 organization.

8 (G) Certified copies of the employee organization's
9 constitution and by-laws.

10 (H) A description of the unit proposed by the employee
11 organization specifying the classifications to be included.

12 (I) Individually signed employee authorization cards dated
13 within thirty (30) days prior to the filing of the petition, which show proof of support of forty
14 percent (40%), or more of the employees within the proposed new representation unit.
15 Such signed employee authorization cards shall clearly set forth the intent of the employee
16 with respect to representation by the employee organization and the proposed unit
17 composition.

18 (2) Response and Notice of Filing of Petition.

19 Upon receipt of the petition, the Employee Relations Division shall
20 expeditiously determine whether or not there has been compliance with the requirements of
21 13.026(c)(1). If an affirmative determination is made by the Employee Relations Division, it
22 shall (1) advise all employees in the proposed new authorized employee representation unit
23 by posting notice at appropriate work locations for thirty (30) days; and (2) shall serve notice
24

1 of the filing on the Director of Human Resources and all exclusive recognized employee
2 organizations.

3 (3) Contest to the Determination that the Petition is not in Compliance.

4
5 If the Employee Relations Division determines that the petition is not in
6 compliance with the requirements of 13.026(c), the Employee Relations Division shall so
7 notify the petitioning employee organization. If the petitioning employee organization
8 contests the finding that the petition was not in compliance, it may file a contest, in writing,
9 with the Employee Relations Division within thirty (30) days after service of notice that the
10 petition was not in compliance. If the contest is not granted by the Employee Relations
11 Division, a hearing officer shall be selected by the County from the hearing officer panel
12 established pursuant to 13.026(e) to conduct a hearing to determine compliance with the
13 process provided for in this section. Following the hearing, the hearing officer shall grant or
14 deny the contest. If the hearing officer finds that the petition was not in compliance with the
15 requirements of 13.026(c), the petition shall be dismissed. If the hearing officer finds that
16 the petition was in compliance, the petition shall be processed in accordance with this
17 section.
18

19 (4) No Challenges to Appropriateness of Proposed Unit.

20
21 If no challenge is filed by any employee organization or Director of
22 Human Resources within thirty (30) days after service of the notice of the filing of the
23 petition, the Employee Relations Division shall submit the proposed new authorized
24 employee representation unit to the Board of Supervisors.

25 (5) Challenges to the Appropriateness of Proposed Unit.

26
27 Within thirty (30) days after mailing notice of the filing of the petition, a
28 challenge may be filed, in writing, with the Employee Relations Division by an employee

1 organization or the Director of Human Resources. A challenge by an employee organization
2 or the Director of Human Resources shall state the grounds for the challenge, clearly
3 indicating the reasons why the proposed new unit is not appropriate. Any challenge filed by
4 an employee organization shall be accompanied by proof of support of ten percent (10%) or
5 more of the employees in the newly proposed authorized employee representation unit.
6 "Proof of support", for purposes of this section, shall mean individually signed employee
7 authorization cards dated within the thirty (30) day challenge period setting forth the intent of
8 employees with respect to representation by the employee organization.
9

10 (6) Hearing on Challenges.

11 Upon receipt of a challenge to the appropriateness of the unit, a hearing
12 officer shall be selected by the County from the hearing officer panel established pursuant to
13 13.026(e) to conduct a hearing. Following the hearing, the hearing officer shall (1) grant or
14 deny the challenge; or (2) recommend modification of the proposed new authorized
15 employee representation unit. If the hearing officer recommends the creation of new
16 authorized employee representation unit, the Employee Relations Division shall submit such
17 recommendation to the Board of Supervisors.
18

19 (7) Creation of New Employee Representation Unit.

20 The recommendation of the hearing officer regarding modification,
21 consolidation and/or the creation of new representation units are subject to and effective
22 upon approval of the Board of Supervisors.
23

24 (d) Assignment of New Classifications to Representation Units.

25 The unit assignment process is used to determine the placement of a newly
26 created classification in an authorized employee representation unit based upon the existing
27 unit descriptions and duties of the new classification.
28

1 (1) Placement of New Classification in Appropriate Representation Unit.

2 Human Resources shall review the duties of any proposed new job
3 classifications in relation to the existing unit descriptions contained in 13.025(a) and shall
4 recommend placement of all new job classifications in an appropriate authorized employee
5 representation unit. A newly created job classification shall be assigned to an authorized
6 employee representation unit upon approval by the Board of Supervisors.
7

8 (e) Hearing Officer Panel.

9 The County will establish and maintain a Hearing Officer Panel that will contain
10 the names of five hearing officers. Employee organizations may make recommendations for
11 hearing officers. In order to be on the panel, the Hearing Officer must be a third party
12 neutral who is not employed by either a public entity or an employee organization; must
13 have experience as a hearing officer or arbitrator in disputes regarding the composition and
14 determination of bargaining units; and must agree to be on the panel. The costs of the
15 hearing officer shall be shared equally by the County and any participating employee
16 organizations. Such costs do not include the costs incurred in the use of any employees,
17 agents, or attorneys.
18

19 **13.027 Representation Proceedings.**

20 Representation proceedings are administered by the Employee Relations Division of
21 the Human Resources Department to resolve questions concerning representation and
22 determine the exclusive recognized employee organization for authorized employee
23 representation units.
24

25 (a) Recognition Requests and Petitions.

26 An employee organization may seek to become the exclusive recognized
27 employee organization of an authorized employee representation unit by filing a voluntary
28

recognition request or petition for certification or decertification, as applicable. A voluntary recognition request is appropriate where an employee organization desires to become the exclusive recognized employee organization of an unrepresented authorized employee representation unit, without an election, based on a showing that a majority of the employees in the unit desire representation by such employee organization. Voluntary recognition is not appropriate where another employee organization has previously been recognized as the exclusive representative of all or part of the same unit. A petition for certification and/or decertification is appropriate where an election is required to determine the exclusive representative, if any, of an authorized employee representation unit comprised of currently represented employees.

(1) Voluntary Recognition Requests.

(A) Content and Timing of Voluntary Recognition Requests.

An employee organization may file a petition at any time seeking voluntary recognition to become the exclusive representative of an existing unrepresented unit. An employee organization that has not filed a petition for unit creation may, within thirty (30) days after the creation of the new authorized employee representation unit by the Board of Supervisors, file a voluntary recognition request with the Employee Relations Division which shall contain the following information:

(I) The name and street address of the employee organization.

(II) The name, title, mailing address and business telephone numbers of the employee organization's principal representative.

1 (III) A statement that the organization has no restriction on
2 membership based on race, color, creed, national origin, sex, age, physical handicap,
3 marital status, sexual orientation or political affiliation.

4 (IV) A statement that the primary purpose of the employee
5 organization is to represent employees on matters concerning wages, hours, and other
6 terms and conditions of employment.

7 (V) A statement as to whether the employee organization is a
8 chapter of, or affiliated directly or indirectly in any manner, with a local, regional, state,
9 national or international organization, and, if so, the name and address of each such
10 organization
11 organization

12 (VI) Certified copies of the employee organization's
13 constitution and by-laws.

14 (VII) Individually signed employee authorization cards dated
15 within thirty (30) days prior to the filing of the petition, which show proof of support of more
16 than fifty percent (50%) of the employees within the proposed new representation unit.
17 Such signed employee authorization cards shall clearly set forth the intent of the employee
18 with respect to representation by the employee organization.
19

20 An employee organization that has filed a valid petition for unit creation shall not be
21 required to also submit a voluntary recognition request, if it provided individually signed
22 employee authorization cards dated within thirty (30) days after the creation of the unit which
23 showed proof of support of a majority of employees in the new representation unit. An
24 employee organization that has filed a valid petition for unit creation but has not provided
25 authorization cards from a majority of employees in the new representation unit shall not be
26 required to file a voluntary recognition request but must provide additional individually
27
28

1 signed employee authorization cards, within thirty (30) days of the creation of the new unit,
2 which show proof of majority support.

3 (B) Response to Voluntary Recognition Request.

4 Upon receipt of a voluntary recognition request, a neutral third
5 party shall be selected by the Employee Relations Division and the employee organization
6 to review the signed petition and authorization cards to verify whether the employee
7 organization has majority support, defined as more than 50% of the employees of the
8 designated unit. In the event the Employee Relations Division and the employee
9 organization cannot agree on a neutral third party, the State Mediation and Conciliation
10 Service shall be the neutral third party and shall verify the majority status of the employee
11 organization.
12 organization.

13
14 (C) Certification of Results.

15 In the event that the neutral third party determines, based on the
16 signed petition and authorization cards, that an employee organization has the support of a
17 majority of the employees in the new representation unit, it shall be certified as the exclusive
18 recognized employee organization of that representation unit.

19 (D) Absence of Support of a Majority of Employees.

20 In the event that the neutral third party determines, based on the
21 signed petition and authorization cards, that (1) the petitioning employee organization does
22 not have majority support, but has support of at least forty percent (40%) or (2) a second
23 employee organization has the support of at least thirty percent (30%) of the employees in
24 the unit in which recognition is sought, the neutral third party shall order an election to
25 establish whether an employee organization, if any, has majority status.
26

27 (2) Petition for Certification or Decertification.
28

1 (A) Content and Timing of Petition for Certification and/or
2 Decertification.

3
4 An employee organization may file a petition for certification
5 and/or decertification seeking to decertify an existing employee organization and/or become
6 the exclusive recognized employee organization of an existing or newly created
7 representation unit, as applicable. An employee or group of employees may file a
8 decertification petition seeking to decertify the incumbent exclusive recognized employee
9 organization of an existing representation unit. Such petitions for certification or
10 decertification may only be filed during the thirty (30) day period beginning not earlier than
11 three-hundred and sixty (360) days and ending not later than three-hundred and thirty (330)
12 days before the expiration of any existing Memorandum of Understanding or at any time
13 when a valid Memorandum of Understanding is no longer in effect.
14

15 (I) A petition for certification and/or decertification filed by an
16 employee organization shall contain:

17 (i) The name and street address of the employee
18 organization.
19

20 (ii) The name, title, mailing address and business telephone
21 numbers of the employee organization's principal representative.

22 (iii) A statement that the organization has no restriction on
23 membership based on race, color, creed, national origin, sex, age, physical handicap,
24 marital status, sexual orientation or political affiliation.
25

26 (iv) A statement that the primary purpose of the employee
27 organization is to represent employees on matters concerning wages, hours, and other
28 terms and conditions of employment.

1 (v) The date of expiration of any Memorandum of
2 Understanding or extension of such Memorandum.

3 (vi) A statement as to whether the employee organization is a
4 chapter of, or affiliated directly or indirectly in any manner, with a local, regional, state,
5 national or international organization, and, if so, the name and address of each such
6 organization.
7

8 (vii) Certified copies of the employee organization's
9 constitution and by-laws.

10 (viii) Individually signed employee authorization cards dated
11 within thirty (30) days prior to the filing of the petition which show proof of support of forty
12 percent (40%) or more of the employees within the representation unit. Such signed
13 employee authorization cards shall clearly set forth the intent of the employee with respect
14 to representation by the employee organization.
15

16 (II) A petition for decertification filed by an employee or group of
17 employees shall contain:

18 (i) The name, address and telephone number of the
19 individual authorized to act as their agent in filing a petition for decertification.
20

21 (ii) The date of expiration of any Memorandum of
22 Understanding or extension of such Memorandum.

23 (iii) Individually signed employee statements dated within
24 thirty (30) days prior to the filing of the petition, which show proof of support of forty percent
25 (40%), or more of the employees within the representation unit. Such signed employee
26 statements shall clearly set forth the intent of the employee to no longer be represented by
27 the exclusive recognized employee organization.
28

1 (B) Response to Petition.

2 Upon receipt of the petition for certification or decertification, the
3 Employee Relations Division shall determine whether or not there has been compliance with
4 the requirements of 13.027(a)(2)(A). If an affirmative decision is made by the Employee
5 Relations Division, it shall direct a secret ballot election to be held to resolve the question of
6 representation. If the Employee Relations Division determines that the petition for
7 certification or decertification is not in compliance, it shall be dismissed.
8

9 (3) Open Window Transition.

10 Notwithstanding any other provision of the Employee Relations Ordinance, any
11 petition filed that seeks to change the representation status for employees in bargaining
12 units, subject to a Memorandum of Understanding that has an expiration date in calendar
13 year 2007, may only be filed during a period beginning not earlier than two hundred forty
14 (240) days and ending not later than two hundred ten (210) days before the original
15 expiration date of the existing Memorandum of Understanding.
16

17 (b) Election Procedures.

18 Elections shall be conducted to determine which, if any, employee
19 organization shall be chosen by eligible employees as the exclusive recognized employee
20 organization of an authorized employee representation unit. The State Mediation and
21 Conciliation Service shall conduct secret ballot elections in accordance with standard
22 procedures and regulations established by the State Mediation and Conciliation Service
23 consistent with the provisions of this Chapter.
24

25 (1) Consent Election Agreement.

26 Upon directing an election, the Employee Relations Division, any
27 employee organizations that will appear on the ballot, and other involved parties shall, with
28

1 the assistance of the State Mediation and Conciliation Service, shall attempt to agree on
2 procedural matters related to the conduct of the election. Such procedural matters may
3 include the method of the election, dates, hours, locations, and the order and wording of
4 ballots.

5
6 (2) Ballot.

7 Provided that the employee organizations have established proof of
8 support as required in this Chapter, there shall be on the ballot (1) the name of the
9 incumbent organization; (2) the name of the petitioning employee organization; (3) the name
10 of any challenging employee organizations; and (4) a provision for "no representation". An
11 incumbent exclusive representative of employees shall not be required to provide proof of
12 support to be placed on the ballot.

13
14 (3) Eligible Voters.

15 Shall be defined as those employees in the authorized employee
16 representation unit whose names appear on the payroll immediately prior to the date of the
17 election, including those on vacation, short-term layoff, or authorized leave of absence, and
18 who remain employed by the County in the same unit on the date of the election.

19
20 (4) Voting Results.

21 The State Mediation and Conciliation Service shall declare the results of
22 an election only when a majority of eligible employees in the unit voted in the election. If
23 less than a majority of eligible employees cast valid votes in an election, the election shall
24 be declared a nullity and the results will be voided. If a majority of eligible employees cast
25 valid votes in an election, the State Mediation and Conciliation Service shall then (1) certify,
26 as the exclusive recognized employee organization of the authorized employee
27 representation unit, the employee organization receiving a majority of the valid votes cast; or
28

1 (2) declare that no employee organization is the exclusive recognized employee
2 organization of the unit if the choice "no representation" received a majority of valid votes
3 cast.

4 (5) Runoff Election.

5 If the ballot included three (3) or more choices and no choice received a
6 majority of the valid votes cast, a runoff election shall be held, as soon as practicable,
7 between the two (2) choices receiving the largest number of valid votes. Only employees
8 who were eligible to vote in the first election and who remain eligible on the date of the
9 runoff election shall be eligible to vote in the runoff election.
10

11 (6) Costs of Election.

12 Any costs incurred in conducting an election shall be borne equally by
13 the County and the employee organizations appearing on the ballot. Such costs do not
14 include the costs incurred in the use of any employees, agents, or attorneys.
15

16 (7) Certification/Election Bar.

17 For a period of one (1) year after an employee organization is certified
18 as the exclusive recognized employee organization or for a one (1) year period following the
19 date of an election that did not result in the certification of an exclusive representative, an
20 employee organization may not file a modification or representation petition for that unit or
21 any subdivisions thereof.
22

23 **13.028 Scope of Representation.**

24 The scope of representation shall include all matters relating to employment
25 conditions and employer-employee relations, including but not limited to, wages, hours, and
26 other terms and conditions of employment; except, however, that the scope of
27
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1 representation shall not include consideration of the merits, necessity, or organization of any
2 service or activity provided by law or executive order.

3 **13.029 Exclusive Recognized Employee Organization's Rights.**

4 (a) Exclusive Recognized Employee Organization.

5 An employee organization shall be certified as the exclusive recognized
6 employee organization pursuant to the provisions of Section 13.027. An employee
7 organization so certified must represent all employees within the unit to which it has been
8 certified regardless of membership status in the employee organization.
9

10 (b) Meet and Confer.

11 An exclusive recognized employee organization shall have the right to meet
12 and confer in good faith with authorized employee relations representatives of the County
13 regarding wages, hours, and other terms and conditions of employment within the scope of
14 representation. The County is under no obligation to meet and confer in good faith with any
15 employee organization, unless it has been certified as an exclusive recognized employee
16 organization and continues to maintain majority status; provided, however, that an exclusive
17 recognized employee organization may choose to coordinate bargaining, on an advisory
18 basis, with another employee organization if such coordinated bargaining is acceptable to all
19 parties.
20

21 (c) Representation.

22 Exclusive recognized employee organizations shall have the right to represent
23 their members in their employment relations with the County. Employee organizations may
24 establish reasonable restrictions regarding who may join and may make reasonable
25 provisions for dismissal of individuals from membership. Nothing in this section shall
26
27
28

prohibit any employee from appearing on his/her own behalf in his/her employment relations with the County.

(d) Employee's Appearance for Employee Organization.

Appointing authorities shall grant reasonable time off without loss of compensation or other benefits to a reasonable number of designated County employees serving as representatives of an exclusive recognized employee organization when formally meeting and conferring with the County on matters within the scope of representation.

13.0210 Collective Bargaining.

The County and the exclusive recognized employee organization for each authorized employee representation unit shall meet and confer in good faith in an attempt to reach agreement on all matters within the scope of representation that are brought forward for consideration. Where agreement is not reached through the meet and confer process, dispute settlement procedures have been established to facilitate resolution of unresolved negotiation items.

(a) Negotiation Procedure for Initial And Successor Memoranda of Understanding.

The collective bargaining process between the County and an exclusive recognized employee organization shall consist of (1) meeting and conferring in good faith; (2) mediation of unresolved issues by a Mediator who acts in the role of an impartial third party; and (3) advisory arbitration of issues at impasse. Any costs associated with mediation and/or advisory arbitration shall be divided equally between the parties.

(1) Meet and Confer.

In the event the County or an exclusive representative intends to initiate negotiations for a successor memorandum of understanding (MOU), it shall serve written notice of that intent upon the other party during the time period specified in the existing

1 MOU. Where no time period is established, a party to a memorandum of understanding
2 who intends to initiate negotiations for a successor agreement must serve written notice of
3 that intent upon the other party at least five (5) months prior to the expiration date of any
4 existing or continued memorandum of understanding. Written notice of intent to initiate
5 negotiations shall also include that party's written bargaining proposals.
6

7 Upon receipt of timely notice of intent to initiate negotiations, the exclusive
8 representative and County shall promptly commence the collective bargaining process and
9 shall continue to meet and confer in good faith for a reasonable period in an attempt to
10 reach agreement on all matters within the scope of representation proposed to be
11 incorporated into the memorandum of understanding.
12

13 If, after a reasonable period of good faith negotiation, the County and exclusive
14 recognized employee representative have not reached agreement on all matters within the
15 scope of representation, either party may request the appointment of a Mediator to assist
16 the parties in reaching agreement.

17 (2) Mediation.

18 A Mediator shall be mutually agreed upon by the parties to assist in
19 resolving any disputed issues within the scope of bargaining. If the parties are unable to
20 mutually agree upon a Mediator, a list of potential Mediators shall be requested from the
21 State Mediation and Conciliation Service. The parties shall then select the Mediator from the
22 list by alternately striking names until the name of only one Mediator remains. The Mediator
23 shall have the authority to establish dates and times for meetings, offer suggestions, and
24 otherwise facilitate settlement but shall have no power to compel the parties to agree to any
25 proposal or make concessions. No person serving as a Mediator shall serve as Advisory
26
27
28

1 Arbitrator in any subsequent advisory arbitration proceeding unless mutually agreed to by
2 the parties.

3 If the County and exclusive representative are unable to reach agreement with the
4 assistance of a Mediator, impasse may be declared by either party by serving written notice
5 upon the other party and any unresolved issues within the scope of representation shall be
6 submitted to an Advisory Arbitrator. Upon mutual agreement, the parties may continue to
7 mediate disputed issues until the advisory arbitration process has commenced.
8

9 (3) Advisory Arbitration.

10 (A) The Advisory Arbitrator shall be selected by mutual agreement to
11 hold an evidentiary hearing and issue findings and recommendations to the parties on the
12 unresolved issues. The Advisory Arbitrator shall be selected at the same time as the
13 Mediator and must possess recognized expertise in the field of public sector labor relations
14 and the integrity and impartiality necessary to protect the public interest as well as the
15 interest of the County and its employees. If the parties are unable to mutually agree on an
16 Advisory Arbitrator, the parties shall select the Arbitrator from a separate list obtained from
17 the State Mediation and Conciliation Service by alternately striking names until only one
18 Arbitrator remains, provided, however, that the parties may mutually agree to also use the
19 Mediator as the Advisory Arbitrator.
20
21

22 (B) Prior to the advisory arbitration hearing, each party shall serve,
23 on the Advisory Arbitrator and the other party, a written statement identifying all unresolved
24 issues and summarizing its position with regard to the unresolved issues. Such written
25 statement shall be served on the Arbitrator and other party at least five (5) work days prior to
26 the hearing.
27
28

1 (C) The Advisory Arbitrator shall have the power to regulate the date,
2 time, location and conduct of the arbitration hearing, and administer oaths, examine
3 witnesses and documents, take testimony and receive evidence during the hearing.
4 Following the arbitration hearing, the Advisory Arbitrator shall make findings and
5 recommendations on the unresolved issues, taking into consideration all reliable and
6 relevant information including the following factors, as applicable:
7

8 (I) The lawful authority of the employer.

9 (II) Stipulations of the parties.

10 (III) The interests and welfare of the public and the financial
11 ability of the County to meet the costs.
12

13 (IV) Comparison of the wages, hours and conditions of
14 employment of the employees involved in the bargaining unit with the wages, hours and
15 conditions of employment of other employees performing similar work, giving consideration
16 to factors peculiar to the area and classification involved including those specified in Section
17 13.0210(c)(1).
18

19 (V) The continuity and stability of employment, and the effect
20 on the normal standard of public service.

21 (VI) The overall compensation presently received by the
22 employees, including direct wage compensation, vacations, holidays and other excused
23 time, insurance, retirement, health benefits, and all other benefits received.

24 (VII) Such other factors, not confined to the foregoing, which
25 are normally or traditionally taken into consideration in the determination of the wages,
26 hours and conditions of employment provided, however, that any offers of compromise and
27
28

1 settlement made in mediation, other than formal proposals and counterproposals, shall not
2 be admissible in the advisory arbitration proceeding.

3 (D) The Advisory Arbitrator shall submit his findings and
4 recommendations on the unresolved issues to the Employee Relations Division and the
5 exclusive recognized employee organization. As soon as practicable following receipt, the
6 exclusive recognized employee organization will accept or reject the findings and
7 recommendations of the Advisory Arbitrator and serve notice of the results upon the
8 Employee Relations Division. Not later than thirty (30) days after service of notice of such
9 results, unless extended by the parties, the Board of Supervisors shall accept or reject the
10 findings and recommendations of the Advisory Arbitrator. The recommendations of the
11 Advisory Arbitrator will be deemed accepted by the Board of Supervisors after such thirty
12 (30) day period (rounded to the beginning of the nearest pay period), unless the Board of
13 Supervisors takes action to accept or reject the recommendations.

14 (E) If either the Board of Supervisors or the exclusive representative
15 rejects the findings and recommendations of the Advisory Arbitrator, the County may
16 implement its last, best and final offer, but shall not implement a memorandum of
17 understanding. The unilateral implementation of the County's last best and final offer shall
18 not deprive a recognized employee organization of the right, each year, to meet and confer
19 on matters within the scope of representation, whether or not those matters are included in
20 the unilateral implementation, prior to the adoption by the County of its annual budget, or as
21 otherwise required by law.

22 (F) If the Board of Supervisors and exclusive representative accept
23 the findings and recommendations of the Advisory Arbitrator, such recommendations shall
24 be deemed agreed upon as the final resolution of the issues submitted to advisory
25 arbitration.

1 arbitration and a memorandum of understanding shall be executed, incorporating all
2 negotiated agreements and the advisory arbitrator's recommendations, except as otherwise
3 modified by mutual agreement of the parties. Such negotiated agreements and
4 recommendations of the Advisory Arbitrator shall not be binding on the parties until the
5 Board of Supervisors approves the executed memorandum of understanding.
6

7 (G) Upon mutual agreement, the parties may continue to meet and
8 confer in an attempt to reach agreement on unresolved issues until the Advisory Arbitrator's
9 findings and recommendations are acted upon by the Board of Supervisors.

10 (4) Adoption of Executed Agreement.

11 Once tentative agreement has been reached on all items of negotiation, the
12 exclusive recognized employee organization and Employee Relations Division shall
13 prepare a written memorandum of understanding incorporating all negotiated agreements.
14 After the Employee Relations Division has been notified by the exclusive representative
15 that it has ratified the proposed written memorandum of understanding, the exclusive
16 recognized employee organization and Employee Relations Division shall execute such
17 written memorandum of understanding which shall be submitted to the Board of
18 Supervisors. If the Board of Supervisors adopts the executed written Memorandum of
19 Understanding, it shall become binding on the County and exclusive representative.
20

21 (b) Meet and Confer Obligations During Term of Memorandum of Understanding.

22 (1) Advanced Notice of Proposed Changes.

23 Subject to the provisions of any current Memorandum of Understanding
24 in full force and effect, and except in cases of emergency, each exclusive recognized
25 employee organization affected shall be given a reasonable advance notice of change(s) to
26 any ordinance, rule, regulation, or proposal relating to matters within the scope of
27
28

1 representation proposed to be adopted by the County and shall be given the opportunity to
2 meet with the County regarding such matters. In cases of emergency, when the County
3 determines that an ordinance, rule, resolution, or regulation must be adopted immediately
4 without prior notice or meeting with an exclusive recognized employee organization, the
5 County shall provide such notice and opportunity to meet at the earliest time following
6 adoption of such emergency ordinance, rule, resolution, or regulation.
7

8 (2) Process.

9 The parties shall meet in good faith regarding the proposed changes.
10 If, after a reasonable period, the Employee Relations Division and the exclusive
11 representative are unable to resolve matters within the scope of representation, either party
12 may request to mediate any disputed issues in accordance with the procedures specified in
13 13.0210(a)(2).
14

15 (c) Other Considerations.

16 (1) Salary Considerations.

17 In consideration of setting salary rates, the parties shall include, but not
18 be limited to the following factors: retention, recruitment, internal relationships, prevailing
19 wages, and comparable public and/or private sector.
20

21 (2) Nothing herein shall preclude any of the parties to the negotiation
22 procedure from making a presentation to the Board of Supervisors at a public meeting,
23 subject to any mutually agreed upon ground rules.

24 (3) Mediation and arbitration proceedings shall be treated as confidential.

25 (4) Furnishing Information and Documents Pertaining to Employment
26 Relations.
27
28

1 The County and employee organizations will provide requested information and/or
2 documents that are necessary and relevant to negotiating or enforcing a collective
3 bargaining agreement except as otherwise provided by applicable law.

4 **13.0211 Unfair Labor Practices.**

5
6 The Public Employment Relations Board (PERB) has original jurisdiction over
7 charges alleging unfair labor practices, which involve County employees, other than peace
8 officers who are exempted by Government Code Section 3511 and management
9 employees, and is solely responsible for the adjudication of such charges.

10 (a) It shall be an unfair practice for the County:

11 (1) To impose or threaten to impose reprisals on employees, to
12 discriminate or threaten to discriminate against employees, or otherwise to interfere with,
13 restrain, or coerce employees because of their exercise of rights guaranteed by this
14 Chapter.

15
16 (2) To dominate or interfere with the formation of any employee
17 organization or contribute financial support to it, provided the rights recognized or granted to
18 employee organizations in this chapter shall not be construed as financial support.

19 (3) To refuse, or fail to meet and confer in good faith with representatives of
20 an exclusive recognized employee organization on matters within the scope of
21 representation.

22
23 (4) To deny exclusive recognized employee organizations rights
24 guaranteed to them by this Chapter.

25 (5) To violate any negotiations ground rule agreed to by the parties.

26 (6) To lock out employees of the County.
27
28

(7) To cause or attempt to cause any exclusive recognized employee organization to violate Section 13.0211(b).

(8) To violate any provision of this chapter.

(b) It shall be an unfair labor practice for an employee organization or their representatives or members:

(1) To cause or attempt to cause the County to violate Section 13.0211(a).

(2) To impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this Chapter, or failure to represent all employees in the appropriate unit fairly and impartially in good faith.

(3) To refuse, or fail to meet and confer in good faith with County officials on matters within the scope of representation, when the employee organization involved is an exclusive recognized employee organization.

(4) To violate any negotiations ground rule agreed to by the parties.

(5) To call for or conduct a boycott or induce or encourage any person or entity to cease performing services or doing business with the County on account of any jurisdictional work dispute.

(6) To violate any provision of this chapter.

(c) Charges of an unfair labor practice may be initiated by a County representative, by a representative of any employee organization, or by an individual employee or unrepresented group of employees.

1 (1) For those employees under the jurisdiction of the PERB, such charges
2 shall be filed with the PERB within six (6) months of the occurrence of the conduct alleged to
3 be an unfair labor practice. Such charge shall contain:

4 (A) The "charging party's" name, address and telephone number;

5 (B) The name, address and telephone number of the party alleged to
6 have committed the unfair practice (the "respondent");
7

8 (C) The section(s) of the Government Code the charging party
9 believes have been violated;

10 (D) The section(s) of this chapter alleged to have been violated.

11 (E) A clear and concise statement (including dates, names, places,
12 etc.) of the conduct, which the charging party asserts, constitutes an unfair practice.
13

14 (2) For those employees who are peace officers and not subject to the
15 jurisdiction of the PERB pursuant to Government Code Section 3511 and for those charges
16 for which PERB denies jurisdiction, such charges shall be processed consistent with the
17 procedure in the applicable Memorandum of Understanding. Such charges shall be
18 submitted in writing to the Employee Relations Division within six (6) months of the
19 occurrence of the conduct alleged to be an unfair labor practice and shall contain:

20 (A) The "charging party's name, address and telephone number;

21 (B) The name, address and telephone number of the party alleged to
22 have committed the unfair practice (the "respondent");
23

24 (C) The section(s) of the Government Code the charging party
25 believes have been violated;

26 (D) The section(s) of this chapter alleged to have been violated.
27
28

1 (E) A clear and concise statement (including dates, names, places,
2 etc.) of the conduct, which the charging party asserts, constitutes an unfair practice.

3 (d) For charges filed under Section 13.0211(c)(2), a hearing officer/arbitrator,
4 selected jointly by the County and the affected parties shall conduct a hearing to determine
5 whether a party has engaged in an unfair labor practice and shall advise the parties of
6 his/her decision and, if appropriate, shall recommend corrective action, and/or the imposition
7 of penalties, subject to the approval of the Board of Supervisors. Costs for the Arbitrator
8 shall be shared equally by the parties. Such costs do not include the costs incurred in the
9 use of any employees, agents or attorneys.
10

11 **13.0212 Strikes and other concerted activities.**
12

13 The County is committed to conducting its employer-employee relations in a manner,
14 which seeks to minimize the potential for interruption of public services to its citizens. A
15 "strike" includes any concerted stoppage, slowdown or abstinence, in whole or in part, by
16 employees from the full performance of their duties, including a refusal by employees to
17 perform their usual duties, or other concerted interruption of operations or services, for
18 purpose of inducing, influencing, or coercing a change in the conditions, compensation,
19 rights, or obligations of public employment; and except in the case of absences authorized
20 by the County, includes such stoppage, slowdown, interruption, refusal, absence or
21 abstinence by any public employee out of sympathy or support for any other person who is
22 on strike or because of the presence of any picket line maintained by any other person;
23 provided that, nothing herein shall limit or impair the right of any public employee to express
24 or communicate a complaint or opinion on any matter related to the conditions of
25 employment or engage in peaceful, informational picketing in non-work locations on non-
26 work time.
27
28

1 (a) Legal and Protected Strikes:

2 (1) Strikes Permitted.

3 Public employees, except those prohibited by law, may engage in legal
4 and protected strikes only under the following circumstances:

5 (A) The Memorandum of Understanding between the exclusive
6 representative and the County has expired and impasse procedures under Section 13.0210
7 (a) have been exhausted and either the exclusive representative or the Board of
8 Supervisors (BOS) have rejected the recommendations of the Mediator/Advisory Arbitrator
9 pursuant to Section 13.0210; or
10

11 (B) The Board of Supervisors have failed to approve a written
12 tentative Memorandum of Understanding (MOU) that has been ratified by the exclusive
13 representative within thirty (30) days after the parties have finalized such MOU.
14

15 (2) Notice.

16 No employee may participate in a legal and protected strike unless
17 written notification of intent to strike is served on the Employee Relations Division at least
18 ten (10) days prior to commencement of the strike. The notice must contain the following:
19

20 (A) The date and time at which the intended strike will commence;

21 (B) The name and address of the exclusive representative who is
22 involved in the strike;
23

24 (C) The general description of the unit and classification of
25 employees intending to strike;
26

27 (D) Proof of service on the County and Employee Relations Division.
28

1 If the strike does not commence on the date specified in the original notice a
2 new ten (10) day written notice is required.

3
4 (b) Illegal and Unprotected Strikes.

5 Illegal and unprotected strikes are not permitted by public employees and include
6 partial or intermittent strikes, strikes that do not meet the requirements as specified in
7 Section 13.0212 (a)(1) and (2), or strikes that create a substantial and imminent threat to
8 public health and safety. The County would be entitled to any remedies allowed under the
9 law for participation in any illegal and unprotected strikes.
10

11 **13.0213 Administration.**

12 (a) Submission of Current Information by Exclusive Recognized Employee
13 Organization.

14 An exclusive recognized employee organization must submit to the Employee
15 Relations Division revised information whenever there has been a change in any of the
16 following items:
17

18 (1) The name and street address of the organization.

19 (2) The names, titles, mailing address, and home and business telephone
20 numbers of its officers.

21 (3) The names of employee organization representatives who are
22 authorized to speak on behalf of the organization.

23 (4) A designation of two (2) persons and their addresses to whom notice
24 sent by regular United States mail shall be deemed full and sufficient notice on the
25 organization for any purpose.
26

27 (5) A statement whether the exclusive recognized employee organization is
28 a chapter of, or affiliated directly or indirectly in any manner, with a local, regional, state,

1 national or international organization, and, if so, the name and address of each such
2 organization.

3 (6) Certified copies of any changes to the exclusive recognized employee
4 organization's constitution and by-laws.

5
6 (b) Payroll Deductions.

7 Exclusive recognized employee organizations may be authorized payroll
8 deductions privileges for membership dues and insurance premiums for plans sponsored by
9 such organizations upon the written authorization of employees in an authorized employee
10 representation unit for which said organization has been certified. The providing of such a
11 privilege to an exclusive recognized employee organization by the County shall be
12 contingent upon and in accordance with the provisions of a Memorandum of Understanding
13 and/or applicable administrative procedures.

14
15 (c) Agency Shop.

16 An agency shop arrangement may be put into effect by negotiation between
17 the County and an Exclusive Recognized Employee Organization, or such an arrangement
18 may be placed into effect or rescinded, without negotiation, upon approval of a majority of
19 employees who vote in a secret ballot election in accordance with Sections 3502.5 of the
20 Meyers-Milias-Brown Act (MMBA). An agency shop arrangement shall not apply to
21 management employees.

22
23 (1) Any employee who is a member of a bona fide religion, body, or sect
24 that has historically held conscientious objections to joining or financially supporting
25 employee organizations shall not be required to join or financially support any employee
26 organization as a condition of employment. The employee may be required, in lieu of
27 periodic dues, initiation fees, or agency shop fees, to pay sums equal to the dues, initiation
28

1 fees, or agency shop fees to a nonreligious, non-labor charitable fund exempt from taxation
2 under Section 501(c)(3) of the Internal Revenue Code, chosen by the employee from a list
3 of at least three of these funds, designated in a memorandum of understanding between the
4 County and the public employee organization, or if the memorandum of understanding fails
5 to designate the funds, then to any such fund chosen by the employee.
6

7 (2) Every exclusive recognized employee organization that has agreed to
8 an agency shop provision or is a party to an agency shop arrangement shall keep an
9 adequate itemized record of its financial transactions and shall make available annually, to
10 the County, and to the employees who are members of the organization, within 60 days
11 after the end of its fiscal year, a detailed written financial report thereof in the form of a
12 balance sheet and an operating statement, certified as to accuracy by its president and
13 treasurer or corresponding principal officer, or by a certified public accountant. An employee
14 organization required to file financial reports under the federal Labor-Management
15 Disclosure Act of 1959 (29 U.S.C. Sec. 401 et seq.) covering employees governed by this
16 chapter, or required to file financial reports under Section 3546.5, may satisfy the financial
17 reporting requirement of this section by providing the County with a copy of the financial
18 reports.
19
20

21 (d) Use of County Resources.

22 Access to County work locations and the use of County paid-time, facilities,
23 equipment, hardware or software and other resources by exclusive recognized employee
24 organizations shall be authorized only to the extent provided for in a Memorandum of
25 Understanding and/or administrative procedures and shall be limited to activities pertaining
26 directly to the employer-employee relationship and shall not interfere with the efficiency,
27 safety and security of County employees or County operations. Access to and use of County
28

1 paid time, facilities, equipment and other resources shall not be authorized for such activities
2 as: any activity that violates County Policy, soliciting membership, soliciting business by or
3 for any non-County sponsored/sanctioned company, campaigning for office, selling
4 insurance plans, organizing elections, or other similar activities.

5
6 (e) Administrative Rules and Procedures.

7 The Employee Relations Division is hereby authorized to establish such rules
8 and procedures as appropriate to implement and administer the provisions of this Chapter
9 after consultation with affected employee organizations and County Management.


10 **13.0214 Separability.**

11 It is understood and agreed that this Chapter is subject to all current and future
12 applicable Federal and State Laws and regulations and the current provisions of the Charter
13 of the County of San Bernardino. If any part or provision of this Chapter is in conflict or
14 inconsistent with such applicable provisions of those Federal, State or County enactments
15 or is otherwise held to be invalid or unenforceable by any court of competent jurisdiction,
16 such part or provisions shall be suspended and superseded by such applicable law or
17 regulations, and the remainder of this Chapter shall not be affected thereby.
18

19 SECTION 2. This ordinance shall take effect thirty (30) days.

20
21 
22 BILL POSTMUS, Chairman
23 Board of Supervisors

24 SIGNED AND CERTIFIED THAT A COPY
25 OF THIS DOCUMENT HAS BEEN DELIVERED
26 TO THE CHAIRMAN OF THE BOARD
27 DENA M. SMITH, Clerk of the
28 Board of Supervisors



1 STATE OF CALIFORNIA)

2) ss.
3 COUNTY OF SAN BERNARDINO)

4 I, DENA M. SMITH, Clerk of the Board of Supervisors of the County of San
5 Bernardino, State of California, hereby certify that at a regular meeting of the Board of
6 Supervisors of said County and State, held on the 17th day of October, 2006, at
7 which meeting were present Supervisors: Bill Postmus, Paul Biane, Dennis Hansberger,
8 Gary Ovitt, Josie Gonzales

9 _____, and the Clerk, the foregoing ordinance was passed and adopted by the
10 following vote, to wit:

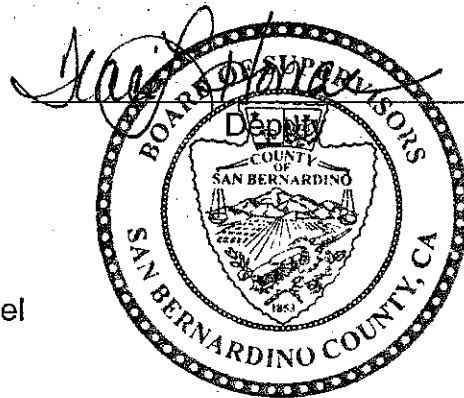
11 AYES: SUPERVISORS: POSTMUS, BIANE, HANSBERGER, OVITT, GONZALES

12 NOES: SUPERVISORS: NONE

13 ABSENT: SUPERVISORS: NONE

14 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official
15 seal of the Board of Supervisors this 17th day of October, 2006.

16
17 DENA M. SMITH, Clerk of the
18 Board of Supervisors of the
19 County of San Bernardino,
20 State of California



21
22
23 Approved as to Form:
24 DENNIS E. WAGNER, Interim County Counsel

25
26 By: [Signature]
27 ROBERT L. JOCKS, Deputy County Counsel

28 Date: 10-24-06